

PRESIDING OFFICER'S  
RULING NO. C2003-1/1

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Complaint on Removal of Collection Boxes

Docket No. C2003-1

INTERIM RULING ON POSTAL SERVICE MOTION  
FOR PROTECTIVE CONDITIONS

(Issued February 12, 2003)

I. Background

*Introduction.* The complaint underlying the instant motion<sup>1</sup> for protective conditions entails various claims about recent collection box removals and the statutory implications thereof. In general, all of the claims grow out of the assertion that thousands of collection boxes have been removed from service since January 1, 2000, pursuant to changes in (or departures in the field from) Postal Operations Manual (POM) § 315.4.<sup>2</sup> Douglas F. Carlson Complaint on Removal of Collection Boxes, November 19, 2002 (Carlson Complaint) at 3-4. The referenced provision sets out a minimum standard — fewer than 25 pieces per day — as the trigger for reviewing the status of a collection box, and identifies mail volume and character, such as sales orders or daily reports, as considerations. Carlson asserts that this provision

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<sup>1</sup> Motion of the United States Postal Service for the Establishment of Protective Conditions, December 20, 2002 (Postal Service Motion).

<sup>2</sup> For a list of Carlson's general allegations, see Complaint at 8. As an example of an official change to POM § 315.5, Carlson claims that the Service eliminated POM § 315.4's requirement to consider "the volume and character of the mail" for boxes with fewer than 25 pieces of mail. Complaint at 4, citing DFC-LR-1 at 3 (the 1/17/2002 Memorandum from Henry A. Pankey, Vice President for Delivery and Retail).

implements several statutory mandates.<sup>3</sup> Id. at 4-5.

A unifying element for many of the claims is the contention that collection box removals have occurred on a scale that constitutes “a change in the nature of postal service on a nationwide or substantially nationwide basis.” This brings them within the purview of 39 U.S.C. § 3661, which requires the Service to seek an advisory opinion from the Commission prior to making such a change. Carlson contends that the Service’s failure to seek such an opinion has caused harm to him and other postal patrons. He asserts, in particular, that the advisory opinion process would have allowed for public input, which he believes 39 U.S.C. § 3661(b) contemplates. Id. at 7.

The alleged inconsistency of the collection box removals with other POM provisions is a unifying element of another set of claims, as is Carlson’s assertion that these provisions, like POM § 315.4, implement various statutory mandates. Id. at 5-7, citing POM §§ 322.22(a), and 315.32.<sup>4</sup> Specifically, Carlson claims that the Service, in some cities nationwide, is failing to comply with POM § 322.22(a), which requires placement of certain collection boxes sufficiently close to customers’ homes so that they do not need to travel more than approximately two miles.<sup>5</sup> Id. at 5. Similarly, Carlson contends that some of the removals are inconsistent with POM § 315.32, which requires collection boxes in some residential areas to be located at least approximately one mile apart. Id. at 6. Given these inconsistencies, Carlson asserts that postal customers are not receiving the level of service these provisions require, and therefore are not

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<sup>3</sup> Referenced mandates include providing adequate and efficient service (39 U.S.C. § 3661(a); providing prompt, reliable and efficient services to patrons in all areas (39 U.S.C. § 101(a)); according the highest consideration to expeditious collection of important letter mail (39 U.S.C § 101(e)); maintaining an efficient system of collecting mail nationwide (39 U.S.C. § 403(b)(1)); and providing types of mail service to meet the needs of different categories of mail and mail users (39 U.S.C § 403(b)(2)). Complaint at 2 and 4-5.

<sup>4</sup> Carlson also claims that in some communities, the Service has removed collection boxes that receive at least 100 pieces of mail per day and therefore would qualify under POM § 322.1 for a final weekday collection time at 5 p.m. or later and a final Saturday collection time at 1 p.m. or later. Complaint at 5.

<sup>5</sup> Specifically, boxes with a weekday collection at 5 p.m. or later and a Saturday collection at 1 p.m. or later.

receiving postal services in accordance with the Postal Reorganization Act. *Id.* at 6 and 7.

*Requested relief.* Accordingly, pursuant to 39 U.S.C. § 3662 — the statutory complaint mechanism — Carlson asks that the Commission conduct a hearing and issue a public report documenting the Service’s failure to provide collection services consistent with the policies of the Postal Reorganization Act. He also asks that the report document the Service’s failure to obtain an advisory opinion from the Commission pursuant to 39 U.S.C. § 3661. *Id.* at 9.

## II. Postal Service Answer and Related Proposal

*Postal Service response.* On December 20, 2002, the Postal Service filed a response to the instant complaint. Its position is that complainant Carlson’s allegations are incapable of sustaining a legitimate statutory complaint proceeding. Answer of the United States Postal Service, December 20, 2002 (Postal Service Answer).

In support thereof, the Service provides a paragraph-by-paragraph response to Carlson’s allegations as well as extensive additional facts, arguments and commentary. The latter material includes observations on subject matter jurisdiction; factual background; and comments on Carlson’s allegations regarding insufficient input. *Id.* at 18-31. It also includes observations on Carlson’s reliance on a change in a POM provision to invoke the statutory complaint process and on his presentation of general allegations. *Id.* at 25-39.

*Proposed disposition.* The Service recommends, based on the force of all of the material it has submitted to date, that the Commission should decline to hear the complaint and summarily terminate the proceeding. *Id.* at 39. However, it also says that it has additional proprietary customer satisfaction survey research results that would be highly germane to the allegations in the complaint, and in the motion under consideration here, it seeks establishment of protective conditions for that material. *Id.* at 39. The Service asserts that this additional information, along with the facts and arguments presented in its Answer, would provide the Commission “with an even more

ample basis to conclude that no hearings or further proceedings are necessary to determine whether the allegations in the complaint are justified or worthy of further consideration.” *Id.* at 39.

*The Service’s motion.* The Service seeks protective conditions for “highly relevant” survey research data, asserting it constitutes proprietary information. The proffered data consist of “a relatively small portion of the results of survey research conducted on behalf of the Postal Service for purposes of Customer Satisfaction Measurement (CSM).” Postal Service Motion at 2. They relate to two matters: “Ease of Mailing Letters” and “Convenient Location of a Mail Collection Box.” Postal Service Answer at 21-23. Mr. Carlson opposes application of protective conditions to the survey results. In brief, he contends that if the Postal Service chooses to file the data, it must accept public access. Douglas F. Carlson Answer in Opposition to Postal Service Motion for the Establishment of Protective Conditions, December 24, 2002 (Carlson Motion) at 5.

In support of its motion, the Service indicates that it consistently has maintained that all CSM data are proprietary business information, restricted to internal use only. It says that with one exception, access to and dissemination of CSM data are strictly controlled, and that the information — whether favorable, unfavorable, or neutral — is shielded from public disclosure. *Id.* The exception is for results related to one question asking customers to rate overall performance. Postal Service Motion at 2.

The Service says it submitted CSM data under protective conditions in Docket No. R2001-1, pursuant to Presiding Officer’s Ruling No. R2001-1/17 (December 17, 2001), and suggests that the same protective conditions be applied in this situation.<sup>6</sup> *Id.* at 2-3. At the same time, however, it characterizes its offer as “the least unpalatable

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<sup>6</sup> The Service incorporates the rationale for protective conditions set forth in a document captioned “Reply of the United States Postal Service to the OCA’s Response to Motion for Protective Conditions,” filed November 28, 2002, in Docket No. R2001-1, and two attached declarations. Postal Service Motion at 5.

resolution” under the circumstances, and identifies several potential drawbacks. *Id.* at 5. These include the possibility that its offer might be considered a retreat from its overall position on the proprietary nature of the CSM data; a belief that its response to the complaint is sufficient, on its own, to show that the complaint is not justified; and a concern that section 3662 proceedings may be used as a vehicle for access to otherwise unobtainable CSM data. *Id.* at 4-6.

*Mr. Carlson’s position.* Mr. Carlson takes issue with the Service’s reliance on the referenced ruling; emphasizes the complaint’s relationship to a monopoly service; and points to media interest in collection box removal. Among other things, he notes that the earlier ruling entailed consideration of data associated with more than 60 questions on a broad range of issues, whereas this dispute involves only two matters that are limited in scope. He contends that almost all collection box mail is First-Class Mail, and therefore claims the CSM data concern the Service’s performance in providing a monopoly service. *Id.* at 2. He also provides, in an exhibit, examples of media interest in the issue. *Id.* at 4. Finally, Mr. Carlson argues that the Service has failed to show how information on some customers’ perceptions of the two measures in issue here would cause competitive harm in its monopoly First-Class Mail market. *Id.* at 5.

### III. Analysis and Findings

The Commission’s longstanding policy in similar disputes is to balance, on a case-by-case basis, public disclosure of relevant data and information with other pertinent factors, including the Service’s interest in protecting material that can legitimately be classified as confidential, commercially privileged or proprietary. One outcome of this approach has been the application of protective conditions, such as those applied to the substantially larger amount of CSM data in issue in Docket No. R2001-1 and invoked here by the Postal Service.

At the same time, the Commission has expressed concern that the Service’s view on access to data exclusively within its control is more restricted than warranted, especially when monopoly services are involved, and has sought additional supporting

declarations or documentation in some situations. See P.O. Ruling No. C2001-3/14 (December 19, 2001). In this case, as Mr. Carlson points out, the Service has made a broad assertion of privilege, without affirmatively showing that information concerning perceptions about ease of mailing and the convenience of collection box locations would necessarily cause competitive harm. Carlson Answer at 4-5.

Given the absence of this important showing, the distinction in the amount and type of CSM data in issue, and the early stage of this proceeding, I am reluctant to adopt either of the approaches that have been suggested by the participants. Instead, an interim step — *in camera* review of the data in issue — appears to be a more appropriate alternative. This approach was employed in Docket No. C2001-3, where the main parties in interest held similarly polarized views with respect to access and protective conditions. See P.O. Ruling No. C2003-1/14, December 19, 2001 (which addressed a considerably larger data set). Using it here, as in the earlier case, is likely to provide a better perspective on both the precise nature of the responses and how sensitive or relevant they are to the Service's proprietary concerns.

Based on the Service's representations, it is anticipated that the material submitted for *in camera* review will include the complete text of the two questions the Service says are germane, along with all appropriate data and information regarding the answers and their interpretation. If additional background on the CSM provide a useful perspective on the questions and answers relevant to this case, that should also be submitted.

Review of this material will be restricted to the Presiding Officer and designated staff advisors only. Reviewers will take all necessary and appropriate steps to insure that their use of the material is in accordance with standards that traditionally apply to *in camera* review. All of the material will be returned to the Postal Service when a final ruling is issued. Depending on the ruling, the Service may be directed to resubmit portions of the material and protective conditions may be established.

Accordingly, the Service is directed to provide, no later than February 24 , 2003, the CSM data, along with any relevant information on its interpretation, for *in camera* review by the Presiding Officer.

### RULING

1. To facilitate a dispositive ruling, the Postal Service is directed to submit no later than February 24, 2003, the Customer Service Measurement survey research data referred to in its December 20, 2002, Motion of the United States Postal Service for the Establishment of Protective Conditions, along with any relevant explanatory material, for *in camera* review at the Commission.
2. Disclosure will be limited to the Presiding Officer and staff advisors designated by the Presiding Officer on the terms referred to in the body of this Ruling.

Tony Hammond  
Presiding Officer